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\*ADMITTED IN MONTANA

February 16, 1982

The Honorable Paul A. Magnuson  
United States District Court  
754 United States Courthouse  
316 North Robert Street  
St. Paul, Minnesota 55101

Re: United States of America, et al. v.  
Reilly Tar & Chemical Corporation, et al.  
Civil No. 4-80-469

Dear Judge Magnuson:

Enclosed is the Statement of Case of Reilly Tar &  
Chemical Corporation.

Yours very truly,

*Edward J. Schwartzbauer*  
Edward J. Schwartzbauer

EJS:ml  
Enclosure

ccs: All Attorneys of Record

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506951

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
FOURTH DIVISION

United States of America,  
Plaintiff,

and

State of Minnesota, by its  
Attorney General, Warren  
Spannaus, its Department of  
Health, and its Pollution  
Control Agency,

Plaintiff-  
Intervenor,

vs.

Reilly Tar & Chemical  
Corporation; Housing and  
Redevelopment Authority of  
St. Louis Park; Oak Park  
Village Associates; Rustic  
Oaks Condominium, Inc.; and  
Philip's Investment Co.,

Defendants,

and

City of St. Louis Park,

Plaintiff-  
Intervenor,

vs.

Reilly Tar & Chemical  
Corporation,

Defendant,

and

City of Hopkins,

Plaintiff-  
Intervenor,

vs.

Reilly Tar & Chemical  
Corporation,

Defendant.

Civil No. 4-80-469

STATEMENT OF CASE  
OF REILLY TAR &  
CHEMICAL CORPORATION

Defendant Reilly Tar & Chemical Corporation submits the following information in response to this Court's Order of December 31, 1981.

1. Name and address of client:

Reilly Tar & Chemical Corporation  
1510 Market Square Center  
151 North Delaware Street  
Indianapolis, Indiana 46204

2. Name of insurance carriers involved, if any:

None.

3. A concise statement of the party's version of the facts of the case:

This is an action which originated with an action originally commenced in the Hennepin County District Court in the year 1970 by the Minnesota Pollution Control Agency and the City of St. Louis Park, alleging soil and water contamination allegedly dating back to the 1930's. St. Louis Park had been trying to acquire the site where Reilly Tar & Chemical Corporation (also known as Republic Creosote - herein "Reilly") operated its coal tar refinery and treating plant, through eminent domain, and the 1970 action was commenced while negotiations for condemnation were going forward. The 1970 action was settled by an agreement between Reilly and St. Louis Park under which Reilly agreed to sell the property and St. Louis Park assumed responsibility for all questions of soil and ground water contamination and agreed to hold Reilly harmless for all costs of restoring the property to any condition required by the PCA. Subsequent to 1972, years of negotiations between St. Louis Park and the PCA failed to result in an agreement concerning the remedial action to be taken. Therefore, in 1978 the PCA and St. Louis Park were permitted to amend the complaint in the Hennepin County action, making additional claims against Reilly.

In 1980, the Federal Government was induced to commence an action in this Court under the Resource, Conservation and Recovery Act and contemporaneously with the filing of the complaint, the Minnesota PCA and St. Louis Park moved to intervene as plaintiffs under Fed. R. Civ. Proc. 24. Their intervention was allowed by the Magistrate. Subsequently, the City of Hopkins also intervened. Its opposition was unopposed. In 1981, the intervenors, and later the United States, amended their complaints to allege a cause of action under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("Superfund"). Reilly's motion to dismiss was argued and submitted on January 15, 1982.

Reilly operated its coal tar refinery and creosote wood treating plant at an 80-acre site in St. Louis Park from 1917 to 1972. As a result of those operations, there were residual deposits of coal tar and creosote on and near the surface of that site. There are also coal tar residuals in a swamp immediately south of Highway 7, near its intersection with Louisiana Avenue. There are serious disputes between the parties as to whether these deposits present any threat to public health. The State of Minnesota has tested the waters in the Prairie du Chien-Jordan aquifer, a 300-500 foot deep aquifer, from which St. Louis Park derives most of its drinking water and its tests apparently indicate parts-per-trillion concentrations of polynuclear aromatic hydrocarbons (PAH's). Some PAH's are suspect human carcinogens. The suspicion is generally derived from limited testing on rodents performed by rubbing the chemical on the animals' skin. Generally, if even one such test results in either a benign or a malignant tumor, the substance is classified as a suspect carcinogen. There is substantial and respected scientific

opinion, however, based upon experimental and epidemiologic evidence, that the PAH's in coal tar and creosote oil may in fact be enhancing natural defenses for cancer prevention. It is believed that the combined biologic effect of a number of such substances present in coal tar and creosote can be one of tumor inhibition, rather than tumor genesis; thus the effect of applying a mixture of biologically active substances cannot be equated with the individual effects of selected substances in the mixture. Coal tar is used medicinally; for example, it is a principal ingredient of salves used for many years in the treatment of dermatitis.

Moreover, the State has not performed any tests to determine whether waters from the Prairie du Chien show evidence of PAH concentrations after treatment but before consumption. All water in St. Louis Park is treated before it is distributed. It is widely recognized that conventional treatment processes, such as sand filtration for iron removal, effects a sharp reduction in PAH concentrations.

The capability of the instruments presently available to the scientific community to detect PAH's in the concentrations reported is questionable. The technique used by the State Department of Health, known as liquid chromatography is the most primitive of the various laboratory techniques presently used. The same sample will sometimes disclose variations in results on the order of a factor of one hundred or more. Nevertheless, the strategy of the PCA has been to close wells in St. Louis Park (and recently one in Hopkins) if the tests show concentrations of suspect carcinogenic PAH's of 2.8 parts per trillion, or 28 parts per trillion non-carcinogenic PAH. A part per trillion is comparable to one second of time in 320 centuries.

There are serious questions between the parties concerning the source of the PAH's reported. PAH's are known to be ubiquitous in the environment, since they are the result of incomplete combustion. They have been found in the environment ever since the time of the first forest fire started by lightning. They are found in coal because coal is formed by very slow combustion. Peat, an historical precursor of coal, also contains PAH's. Minnesota in general and St. Louis Park in particular contain heavy peat deposits. PAH's are also found in cigarette smoke, charcoal-broiled meats and smoked foods. This "background" PAH is considered by most scientists to be higher than the levels used by the State as a criteria for closing public wells in St. Louis Park.

Many man-made sources are probable contributors to the PAH's reported. For example, one of the most heavily contaminated wells is the Milwaukee Railroad well, located south of Highway 7 and East of the Reilly site. It is probable that that well is contaminated with coal dust and by oil spills. One of the State's theories as to how coal tar near the surface of the Reilly site avoids several layers of bedrock and finds its way to the Prairie du Chien-Jordan aquifer is the existence of a buried bedrock valley located East of Highway 100 and North of Excelsior Boulevard. That was the location of a dump owned and operated for many years by the City of St. Louis Park. Subsequent to 1972, the soils were moved several times by the City - when constructing a storm sewer to serve the area and again when extending Louisiana Avenue. Other examples will be disclosed by the evidence.

4. If a discovery termination date has not been set, discovery procedures necessary for trial:
  - a. List of discovery completed to date;
  - b. List of discovery to be completed;
  - c. Date when all discovery will be completed.

a. No discovery has been initiated by any party to this federal action; however, one oral deposition has been taken, lengthy interrogatories have been answered and thousands of documents have been produced in the State Court action previously referred to. That proceeding has not been stayed by any court; however, there is an agreement between all parties to this action that the discovery taken in the State Court action may be used in this action if it is not dismissed by the Court.

b. Numerous depositions will be taken of persons previously involved in the matters described in paragraph 3 and all expert witnesses. The following list is not intended to be exhaustive; however, the following present or former agents or employees of the State or St. Louis Park are among the anticipated deponents.

Larry Anderson  
John P. Bodalich  
Russell Frazier  
C. A. Johannes  
Eldon Kaul  
Roman Koch  
George Koonce  
Robert J. Lindall  
Grant Merritt  
Sandra Gardebring  
Jack Van de North  
Ed Wiik

Dale Wikre  
Ray Folland  
L. T. Johnson  
Harvey McPhee  
James Weisman  
Susan Workman  
Wayne Popham  
Chris Cherches  
Frank Howard  
David Rudberg  
Gary R. Macomber

c. Discovery will be lengthy and complicated and will take approximately 24 months to complete, or approximately February 1984.

5. Contemplated dispositive and non-dispositive motions:

A Motion to Dismiss was argued before this Court on January 15, 1982. We are awaiting a ruling. No other motions are contemplated for the immediate future.

6. Possibility of settlement:

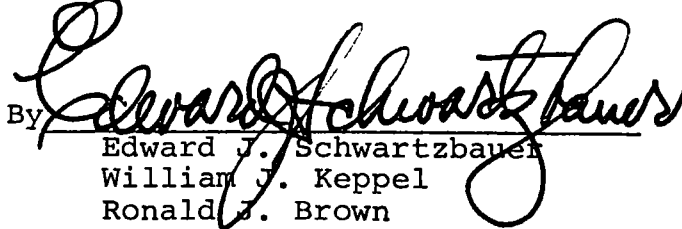
The parties continue to explore the possibility of settlement.

7. Estimated time of trial (including jury selection and jury charge, if relevant):

We anticipate this will be a lengthy trial, i.e.,  
six months.

Dated: February 16, 1982.

DORSEY & WHITNEY

By 

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William J. Keppel  
Ronald J. Brown  
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Chemical Corporation